1. There are three specific grounds on which SECOFI's redetermination violates the Anti-Dumping Agreement.

The Restraint Agreement and Article 3.7(i)

2. The redetermination, like the original determination, violates Article 3.7 of the Anti-Dumping Agreement because it provides no basis for the conclusion that there is a likelihood of substantially increased importation of HFCS from the United States.

3. In this respect, it is noteworthy that the redetermination's analysis of the restraint agreement between Mexican soft drink bottlers and sugar refiners contains almost exactly the same flaws as the arguments Mexico presented in the original Panel proceeding.

4. Specifically, the Panel rejected SECOFI's original analysis because SECOFI improperly premised its analysis on alleged increases in imports from 1996, the time of the conclusion of its period of investigation, rather than from the third quarter of 1997, the latest period for which its record contained data on the volume of imports from the United States. The Panel concluded that "the question for purposes of analysis of threat of material injury is not the level of imports already reached, but the likelihood of **increased** imports" and criticized SECOFI for "conclud[ing] that such imports would have continued increasing by inertia."

5. Yet SECOFI's redetermination provides the same flawed analysis. SECOFI concluded that increased imports were likely in part because imports from the United States during the first three quarters of 1997 exceeded the levels of the previous year. Moreover, SECOFI did not claim that these increases were attributable to purchasers not subject to the restraint agreement. The restraint agreement was not announced until September 1997. Therefore, increased imports of HFCS by soft drink bottlers between January and September 1997 would not be likely to continue after September 1997 because of the existence of the restraint agreement. Indeed, SECOFI assumed that after the restraint agreement took effect all of the soft drink bottlers' consumption of HFCS would be supplied from Mexican HFCS production.

6. The Panel also found SECOFI's original analysis to be improper because SECOFI found merely that the restraint agreement "does not rule out the possibility" of future imports.

7. In paragraph 56 of the redetermination, SECOFI again makes conclusions regarding the possibility of increased imports notwithstanding the restraint agreement.

8. The Panel also found SECOFI's analysis to be improper on a third ground. It found that SECOFI's determination did not provide any analysis to support a conclusion that there was a likelihood that users other than soft drink bottlers would increase their importation of HFCS.

9. The information on which SECOFI relies in its redetermination is not materially different from the information the Panel previously considered and rejected.

10. SECOFI has projected that imports of HFCS by purchasers other than soft drink bottlers

would increase by 467 percent, from approximately 62,000 tons in 1996 to 350,000 tons in 1998. This rate of increase is more than double the rate by which total HFCS imports from the United States – including those by the soft drink bottlers now covered by the restraint agreement – increased during SECOFI's period of investigation. SECOFI provides no information in its redetermination why purchases by these HFCS users, which only accounted for approximately one-third of HFCS consumption in 1996, would be likely to increase at such an astonishing rate.

11. SECOFI's estimate of the likely volume of HFCS imports by purchasers other than soft drink bottlers is based on a series of computations. A careful examination of these computations reveals that notwithstanding Mexico's claims to the contrary, they are not based on the actual purchasing patterns of users of HFCS. Instead, they are based on speculation and conjecture.

12. There are two fundamental flaws with SECOFI's computations. The first relates to Mexico's claim that: "In 1996, the weighted average rate of utilization in consumer industries other than soft drink bottling was [ ] percent."

13. This [ ] percent figure appears nowhere in SECOFI's redetermination. It appears that the [ ] percent figure is a weighted average of theoretical or technical substitution rates of HFCS for sugar for the various types of industries listed in Exhibit Mexico-21.

14. It is noteworthy that the list of purchasing industries and substitution rates in Mexico-21 is not identical to the only listing of substitution rates in the redetermination. That listing appears at paragraph 57 of the redetermination. Mexico claims that this rate reflects data obtained directly from industrial users on HFCS consumption in their purchasing process. Mexico apparently would like the Panel to believe that this data reflects the actual rate that these users substituted HFCS for sugar in 1996.

15. This is not the case. The data in Mexico-20, insofar as used by SECOFI as the basis for the substitution rates used in Mexico-21, pertain merely to [ ] HFCS for sugar. Indeed, Mexico-20 describes these substitution rates as the [ ]. This information is different from the material that Mexico submitted in the original Panel proceeding only insofar as it [ ]. Both this material and the material in the original proceeding merely concern whether a purchaser has the theoretical or technical ability to substitute HFCS for sugar. There is a critical distinction, however, between the theoretical or technical ability to substitute and actual substitution. The Panel rejected data on theoretical substitution during the prior proceedings and it should do so here. SECOFI's redetermination provides no information pertaining to actual substitution rates.

16. To the extent that there is information in Mexico-20 that reflects substitution rates of individual purchasers, SECOFI did not use it in either Mexico-21 or its redetermination. Instead, for purposes of Mexico-21 SECOFI simply selected [ ] reported to it from any source. SECOFI did so despite the fact that several industrial users – [ ].

17. The second fundamental flaw in SECOFI's redetermination relates to SECOFI's assumption that purchasers other than soft drink bottlers would substitute HFCS for 50 percent of their potential sugar consumption in 1997 and 1998. The 50 percent assumption is not based on record evidence. It is a number that SECOFI selected arbitrarily.

18. It is not surprising, therefore, that neither the redetermination nor Mexico's two submissions to this Panel provides any reasoned explanation of how this 50 percent figure was derived. Careful scrutiny of Exhibit Mexico-21, however, reveals how Mexico used the 50 percent figure.

19. Mexico-21 indicates that SECOFI went through several steps. First, SECOFI calculated the percentage of HFCS that purchasers other than soft drink bottlers could substitute for sugar in their operations. This was based on theoretical or technical substitution rates. Second, SECOFI estimated the volume of sugar that would be consumed by these industries in 1997 and 1998 by [ ]. [ ]. See Mexico-20. Then, SECOFI [ ] to derive SECOFI's estimate of the total amount of HFCS that industries other than the soft drink bottling industry could, theoretically, substitute for sugar in 1997 and 1998. Lastly, SECOFI reduced this number by 50 percent and concluded that this amount represented these users' likely HFCS purchases. In other words, SECOFI assumed that these purchasers *would* substitute 50 percent of the HFCS that they *could* substitute for sugar.

20. A careful examination of Mexico-21 confirms that SECOFI's assumption had utterly no basis in reality. Mexico-21 indicates that, during the 1994-96 period, sugar purchases by industrial users other than soft drink bottlers [ ] despite the fact that: (1) these users could theoretically substitute HFCS for sugar to varying degrees and (2) imported HFCS was available from the United States. These purchasing patterns, incidentally, confirm that the substitution rates in Mexico-20 were theoretical, not actual. If the substitution rates were actual, one would have seen significant declines in the amount of sugar these industrial users purchased.

21. SECOFI, however, projected that these users would cut their use of sugar by as much as 50 percent within a two-year period. This projection was not an extrapolation of the historical trends and was not in any way based on these trends. Instead, the projection was totally contrary to the observed data during SECOFI's period of investigation.

22. This confirms that SECOFI's projections were not, as Mexico claims, obtained using objective and reasonable methodologies. SECOFI's analysis was not premised on the situation observed during its period of investigation. Nor was it based on facts. Instead, its conclusion

that substantially increased imports were likely notwithstanding the restraint agreement is based on conjecture.

Analysis of Likely Impact and Article 3.4

23. SECOFI's redetermination does not provide a reasoned and fact-supported analysis concerning why improvements in important industry trends during its period of investigation were not probative in ascertaining the likely future condition of the industry.

24. SECOFI's redetermination indicates that the Mexican sugar industry's performance improved in several critical respects during 1996, a year when imports of HFCS from the United States increased. In particular, the domestic industry was profitable in 1996, and its profitability increased substantially over 1995 levels. Additionally, in 1996 the price of domestically-produced sugar in Mexico increased by a much higher percentage than prices for HFCS imported from the United States. The evidence also shows that, in 1996, the Mexican sugar industry had increasing capacity utilization, rising employment and productivity, declining operating costs, declining sales costs as a percentage of revenue, and stable debt levels.

25. SECOFI was thus obliged to provide a fact-based analysis demonstrating why such positive trends for the Mexican sugar industry in 1996 would reverse in the near future or why other considerations would make these rising trends insignificant. It did not do so.

26. Indeed, as confirmed by Mexico's written submissions to the Panel, SECOFI relied on its projections of the likely levels of sales, prices and profitability in the Mexican sugar industry in conducting its analysis of likely impact. These projections cannot support SECOFI's determination. They are not fact-based and they yield results that are directly contrary to the experience of the Mexican sugar industry during the period of investigation.

27. SECOFI projected a 10 percent decline in sales volume and a 9 percent decline in sales prices for the domestic sugar industry in 1997. Paragraphs 60, 100, 138, 151, and 166 of the redetermination indicate, however, that SECOFI's projections of declines in domestic sales volumes and prices were tied to SECOFI's flawed assumptions regarding likely import volumes. SECOFI's projections of likely import volumes were based on conjecture contrary to fact. These same defects make SECOFI's projections of likely sales volumes for the Mexican sugar industry invalid. SECOFI's pricing projections, because they are dependent on the volume projections, also cannot serve as the basis for an affirmative threat determination.

28. Moreover, the model used by SECOFI to project sugar prices is a "vector autoregression" analysis. This meant that SECOFI projected future values of variables such as price and volume based on the historical relationship between these variables during its period of investigation. Underlying this type of model are two critical assumptions. One is that the variables historically moved in a consistent manner. The second is that the variables would continue to move in the future in the manner that they had in the past.

29. Neither of these assumptions was valid with respect to the Mexican sugar industry. First, there was no consistent relationship between import volumes, sales quantities of domestically-produced sugar, and the prices of domestically-produced sugar during SECOFI's period of investigation. Import volumes increased throughout the period of investigation. The quantity of domestic sugar sales declined slightly during the period of investigation. By contrast, sugar prices declined in 1995, but increased sharply in 1996. In particular, the price of refined sugar increased by 48 percent in 1996, while the price of HFCS-55 increased by only 5 percent that year. HFCS-55 was the product that constituted the bulk of the imports and that SECOFI asserted competed most directly with refined sugar. In light of this historical experience, and in light of the agreement of industry participants reported in paragraphs 111 and 112 of the redetermination that sugar prices had been "highly unstable" during its period of investigation for reasons having nothing to do with HFCS imports, SECOFI was obliged to explain why it was justified in relying on a model whose assumptions were not based on fact. It did not do so.

30. With respect to the second assumption, because of the restraint agreement and the other reasons discussed above, there was no basis to conclude that import volumes would increase in the future in the manner that they did during SECOFI's period of investigation. With respect to this issue as well, SECOFI did not satisfy its obligation to explain why its reliance on its "vector autoregression" analysis was reasonable.

31. Finally, the internal documents from SECOFI's administrative record presented by Mexico to the Panel are inconsistent with the results of SECOFI's pricing projections. Exhibit Mexico-16 contains the projection used in SECOFI's redetermination, namely that sugar prices would decline by 9 percent from 1996 to 1997. Exhibit Mexico-12, in which SECOFI described the basis for its pricing projections, does not support SECOFI's use of the 9 percent figure. The third page of Mexico-12 contains a chart indicating projected 1997 prices for standard sugar. The chart in Mexico-12 indicates that [ ]. Indeed, the prices projected for 1997 are [ ] under which the Mexican sugar industry operated profitably in 1996. SECOFI acknowledges this fact about the standard sugar pricing projections at paragraph 98 of its redetermination. But SECOFI's projections of stable standard sugar prices and declining overall sugar prices for 1997 are irreconcilable, given that SECOFI's record indicates that: (1) standard and refined sugar shared [ ] pricing trends for [ ]of the 36 months in 1994, 1995, and 1996, and (2) standard sugar accounted for [ ] of Mexican sugar volumes. SECOFI has failed to explain why it was justified in relying on pricing projections that were both internally inconsistent and irreconcilable with historical data.

32. SECOFI's projections of sharp declines in profitability in 1997 are based entirely on its flawed projection of declines in sugar sales volumes and sugar sales prices. Thus, SECOFI's projections of the sugar industry's financial performance are equally invalid. Moreover, the record data contradicts SECOFI's projections. In 1996, sugar industry profits increased substantially despite increasing volumes of imported HFCS. SECOFI has failed to explain why it relied on projections contrary to the facts observed during its period of investigation.

33. Mexico contends that SECOFI's conclusions on industry profitability are justified in light of the "financial sensitivity" of the Mexican sugar industry. It asserts that this "financial sensitivity" makes the sugar industry particularly susceptible to losses in revenue. Losses in revenue may be caused either by losses in sales volume or reductions in price. As we have explained, however, SECOFI's record provides no basis -- apart from the results yielded by SECOFI's defective models -- for the conclusion that the Mexican sugar industry was likely to face either lower sales volumes or reduced prices. Consequently, the record also contains no basis for any conclusion that losses in revenue are likely.

34. Moreover, the notion that the "financial sensitivity" of the Mexican sugar industry will cause its performance to deteriorate whenever imports increase is contrary to the data in the SECOFI record. SECOFI's own analysis indicates that the presence of increased volumes of imported HFCS does not necessarily impair the Mexican sugar industry's ability to raise capital and finance debt. Indeed, SECOFI found that, notwithstanding increasing HFCS imports in 1996, the sugar industry's cash flow improved, thus enhancing its ability to obtain short-term financing and permitting it to improve its debt service indices.

35. In sum, Mexico has not satisfied its obligation to analyze the Article 3.4 factors as to impact. Mexico has not provided any fact-based analysis; it has merely manipulated data from projections. The projections cannot serve as a substitute for analysis because they are based on conjecture and yield results contrary to the actual data observed during the course of the investigation. Mexico has not attempted to explain or reconcile its projections with the contrary data.

Notice and Article 12

36. Mexico violated Articles 12.2 and 12.2.2 of the Agreement because SECOFI consistently failed to explain its use of inputs for its projection of industry behavior that yielded results either contrary to or unsupported by the observed data during its period of investigation.

37. SECOFI's failure to explain the inputs that it used in its projections makes it impossible for one reading the determination to ascertain how SECOFI derived its projections of industry behavior. The necessary explanation is not in the determination, nor is it in the type of separate report referenced in Articles 12.2 and 12.2.2. Indeed, Mexico has informed this Panel that SECOFI's analysis of the restraint agreement was premised on substitution rates of HFCS for sugar for various industries. The substitution rates Mexico now states that SECOFI used are different from the substitution rates set forth in paragraph 57 of the redetermination. Moreover, their derivation cannot be traced from anything in the redetermination or any separate report made available to the parties.